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CHARLES ELMORE CROPLEY

Supreme Court of the United States

October Term, 1936.

No. 370.

MARIAN S. HONEYMAN,

Appellant,

against

HERBERT G. HANAN, as Executor of the Last Will and Testament of Herbert W. Hanan, deceased,

Appellee.

BRIEF OF THE REAL ESTATE BOARD OF NEW YORK, INC. AS *AMICUS CURIAE.*

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The Real Estate Board of New York, Inc. is a membership corporation organized and existing under the laws of the State of New York. Its membership numbers upwards of 2400 and includes among others owners, brokers, lending institutions, managers of real estate and appraisers.

The Board sought permission to intervene since, through its members, it speaks for mortgagors and mortgagees who deal annually in transactions involving billions of dollars of real estate.

The Board is vitally interested in the important issues herein and views with alarm the grave economic consequences which may flow from an adverse determination as to the constitutionality of the deficiency judgment statute. Accordingly as *amicus curiae,* it urges that the judgment herein be sustained.

Preliminary Statement.

That the enactment of the Deficiency Judgment Law (Chapter 794 General Laws of New York 1933) constitutes

a valid and proper exercise of the reserved or police power of the State of New York has been fully treated in appellee's brief. The facts and proceedings are set forth in the record and in the briefs of the parties to this appeal.

The Nature of the Emergency.

Real estate throughout the State of New York contributed for the support of local Government approximately 65% of its total cost. (See Annual Report of New York State Tax Commission for the year 1934 Table No. 1, pp. 74 and 75.)

The burden imposed upon real estate for the support of the Government of the City of New York amounts to approximately 76% of its total cost. (See Budget, City of New York.)

In 1933 the depression had so devitalized real estate that the very foundation of the economic structure of the State and the welfare of its citizens was imperiled.

Because of the inherent characteristics of real estate and because of the historical and legal ramifications that surround its method of sale, its mode of finance and the procedure of recapture it was not subject to the precipitate and vertical decline which affected liquid securities such as stocks and bonds. Nevertheless certainly but grudgingly it yielded to the ravages of the depression until its plight had become so dire that unless the Government intervened consequences, irreparable to the citizens of the State, would ensue.

Fully cognizant of the grave situation the Governor convened a special session of the Legislature in August 1933. In his message, referring to the alarming situation with respect to mortgage foreclosures and deficiency judgments he declared

> "The problem is a most difficult one, with far-reaching ramifications and effects. If it were happily one of simply extending relief to the home owner, it would not be so difficult of solution. It is, however, tied up inextricably with the interests of virtually all other groups

of citizens, who are entitled to State protection to the same extent as are the home owners of the State."

Referring directly to deficiency judgments, he said:

"The hardship has been seriously aggravated by reason of the fact that upon foreclosure sales, deficiency judgments have been entered against home owners entirely out of line with the fair value of the property. In this way not only does the small home owner lose his home but he frequently becomes saddled with an excessive deficiency judgment for the rest of his life. The cause of these deficiency judgments is again the absence of any real estate market, and the consequent reluctance to bid on the foreclosure block."

After giving independent study to the Governor's recommendation the Legislature enacted the statute in question here and in so doing predicated its action upon a finding that

"a serious public emergency affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination." (Chapter 794 General Laws of the State of New York 1933.)

The constant decline in real estate values and the almost complete absence of a mortgage money market had precipitated an epidemic of foreclosures. Throughout the country the rate of foreclosures rose steadily year by year, picking up new momentum in 1932 when there was almost three

times as many forced sales as there had been in 1926.[1] In the Borough of Manhattan alone in 1932 property assessed at more than a quarter of a billion dollars changed hands at foreclosure, almost six and one-half times the amount involved in foreclosures in 1928. This represented the culmination of a constantly mounting flood of forced sales. The story is graphically told in the following table:

Year	Assessed Valuation of Property Foreclosed in Manhattan	Per Cent of 1928
1928	$39,332,000	100.00
1929	67,290,000	171.1
1930	89,879,500	228.5
1931	172,332,000	438.1
1932	252,550,500	642.1[2]

The following figures have been taken from the official record of the County Clerk's Office of New York County (applicable only to the Borough of Manhattan) and show the record of judgments of foreclosure and sale beginning with the year 1925 and ending with the year 1933:

Year	Judgments of Foreclosure and Sale
1925	193
1926	369
1927	479
1928	554
1929	660
1930	750
1931	1063
1932	1655
1933	1864
Total	7587

[1] New York Times April 1, 1933, page 31; New York Herald Tribune, April 9, 1933, Section IV-V, page 10. For a general study undertaken by the Division of Research and Statistics of the Federal Home Loan Bank Board, see R. & G., April 8, 1933, page 8.

[2] Figures compiled by the State Board of Housing (R. & G., July 22, 1933, p. 5).

The full significance of this panicky trend is graphically demonstrated by a consideration of the years 1931, 1932 and 1933 alone. In these three years 4582 parcels of real estate in the Borough of Manhattan were brought to the auction block. This represented more than 6% of the total number[3] of non-tax exempt parcels in the entire Borough of Manhattan. In addition to these staggering figures it is a notorious fact that thousands of properties in difficulties were either turned over by deed to mortgagees in lieu of foreclosure or rent assignments were given.

Property of every description was swept away—commercial and residential—the latter amounting in value to $159,274,500[4] and representing 70.2% of the total amount foreclosed in 1932. No class of property was spared.[5]

Much of it came into the hands of the great lending institutions. In 1932, the year immediately preceding the mora-

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[3] Figures taken from the records of the Department of Taxes and Assessments of the City of New York disclosing 74,631 non-tax exempt parcels.

[4] R. & G., January 14, 1933, page 6.

[5]

	Percentage of the Assessed Value of Each Type of Property to the Assessed Value of the Total Foreclosed in Manhattan				
Type of Property	1928	1929	1930	1931	1932
Apartments and Tenements	68.7	62.9	61.8	52.8	61.1
Dwellings	4.8	3.2	3.6	2.4	4.2
Hotels	1.3	4.9	3.9	1.7	4.9
Lofts	12.0	15.8	13.0	14.6	12.5
Office Buildings	3.2	1.9	6.5	21.4	8.5
Stores	.3	.4	3.2	.5	.8
Theatres and Halls	1.5	4.4	1.2	.6	3.1
Garages and Stables	2.4	.5	1.1	2.4	.7
Vacant Land	.4	.8	.2	.4	.5
Miscellaneous	5.4	5.2	5.5	3.2	3.7
Total	100.	100.	100.	100.	100.

These figures are found in R. G., September 8, 1934, page 8.

torium, they acquired at foreclosure sale 542 Manhattan properties assessed at $102,677,700.[6]

In many instances, these institutions had no choice but to foreclose, irrespective of whether it was to their best interest:

> "* * * Bankers are not free agents. They are frequently compelled by law to resort to foreclosure proceedings in the interest of beneficiaries of trust funds in cases where it is apparent that foreclosure will not only cause further misadjustment but perhaps ultimately bring a burden instead of a benefit to the mortgagee. So long as they exercise a diligence in following the prescribed legal procedure, trustees are held harmless in the eyes of the law quite irrespective of the social consequence of their actions."[7]

Effect of Foreclosures

This ever swelling flood of forced sales benefited no one. Mortgagors were rapidly being wiped out. Their properties, originally mortgaged for only about two-thirds of their value, were bid in at purely nominal figures. Accordingly the mortgagor not only lost his property but still remained liable for nearly the entire mortgage debt. Although many valiantly managed to pay up on interest and taxes, their land was none the less swept from under them for, at a time when all debtors were harassed beyond endurance, they were unable to pay installments of principal or the principal itself as it came due. The small and responsible home owner who had saved to buy a house, putting all his ready cash into it and giving back a $5,000 or $6,000 mortgage, found himself without a home.[8]

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[6] Norbert Brown, Statistical Analysis of Manhattan Real Estate Trends, R. & G., January 6, 1934, page 8.

[7] Holden, *The Menace of Mortgage Debts*, Harper's Magazine, April 1933, page 576.

[8] See Article by Douglas L. Elliman, New York Times, Section 10, April 9, 1933, page 2.

This extensive distress liquidation of real estate meant ruin not only for real property owners. It threatened even more widespread and disastrous effects. Institutional investors were rapidly being forced to become real estate operators on an unprecedented scale.[9] Since there was no market for the property which they acquired, their assets tended constantly to become less liquid. And the value of the assets began to shrink dangerously. The ever-increasing number of forced sales caused new lows in value levels.[10] Foreclosure receiverships caused rents to be fixed at rates with which owners of undefaulted equities could not compete and gave further impetus to this process of devastating devaluation. As mortgagees bought in more and more property at their own figures, a steady demoralization of all land values in the vicinity took place.

As was stated by the Court of Appeals:

> "There being no market for real estate of any kind, and the banks refusing to loan money on the best of real estate security, owners were caught, as it were, in a trap due to conditions over which no one had control and for which no relief was at hand. Value was in the property but the value could not be obtained nor anything like it." (Klinke v. Samuels, 264 N. Y. 144, 149.)

The result was inevitable. Deficiency judgments mounted in direct inverse ratio to the abnormally depressed value of the property. As more and more mortgagors were saddled

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[9] "Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security." *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398 (1934) at page 445.

[10] Burton, *Foreclosure of Properties in Manhattan*, 1928-1934 (Institute for Economic Research) 1934, page 5. See articles in New York Herald Tribune, September 2, 1934, Section x, page 1; New York Evening Sun, February 9, 1933, at page 48.

with these judgments the chaos of the real estate market increased.

The need of this emergency legislation was apparent. Its effect as time has shown was salutary and justified. It did nothing more or less than to recognize what every one knew, to wit: that real estate in 1933 had no market on the auction block or elsewhere and substituted a just and reasonable method of determining the value of property and of saving owners from the imposition of unjust judgments which they never could hope to satisfy and which when entered contributed to the vicious circle of chaos caused by the depression.

CONCLUSION.

The judgment appealed from should be sustained.

Respectfully submitted,

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